Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:	
Local Exchange Carriers' Rates, Terms and Conditions for Expanded Interconnection for Special Access	CC Docket No. 93-162 Phase I

OPPOSITION TO PETITION FOR RECONSIDERATION

AD HOC TELECOMMUNICATIONS
USERS COMMITTEE

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Summary

In the face of the LECs' intransigence in refusing to justify the overhead loading factors used in their expanded interconnection tariffs, the Commission was fully justified in prescribing a maximum overhead loading factor in its First Report and Order. Contrary to BellSouth's assertions in its request for reconsideration, the interim prescription procedure adopted in the First Report and Order is not proscribed by the provisions of Section 204(a) of the Act limiting suspension of "carrier-initiated" tariff filings to a maximum of five months, or by judicial precedent interpreting Sections 201-205 of the Act. Further, the First Report and Order meets the requirements for prescription under Section 205 of the Act, having provided an "opportunity for hearing" and having concluded the action taken is "just and reasonable." Finally, and again contrary to BellSouth's arguments, the First Report and Order properly relied on the Commission's authority under Section 4(i) of the Act and on Lincoln Telephone because the First Report and Order is not inconsistent with the provisions of Sections 201-205 as contended by BellSouth, and because the expanded interconnection tariffs, like the tariffs required by the Commission in Lincoln Telephone, are not truly "carrier-initiated."

Just and reasonable expanded interconnection tariffs are essential to an environment in which effective competition in interstate access services might flourish. The First Report and Order's interim prescription is necessary to that end, fully supported, and should not be reconsidered.

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OPPOSITION TO PETITION FOR RECONSIDERATION

The Ad Hoc Telecommunications Users Committee (the "Ad Hoc Committee" of "Committee") hereby opposes the Petition for Reconsideration (the "Petition") of the First Report and Order[1/] filed by BellSouth Telecommunications, Inc. ("BellSouth) on December 13, 1993.

I. INTRODUCTION

The First Report and Order permitted the special access expanded interconnection tariffs which the Commission earlier ordered all Tier 1 LECs to file[2/] to become effective as of November 15, 1993, the date of expiration of the five-month statutory suspension period, pending further investigation and subject to prescription "on an interim basis, [of] a maximum permissible overhead loading factor"[3/]. The interim prescription of a maximum permissible overhead loading factor was

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1/ Local Exchange Carriers' Rates and Conditions for Expanded Interconnection for Special Access, CC Docket No. 93-162, Phase I, (FCC 93-493), First Report and Order, released November 12, 1993 ("First Report and Order").

2/ Expanded Interconnection with Local Telephone Facilities, 7 FCC Rcd 7369 (1992).

3/ First Report and Order at ¶ 2.

deemed necessary because the LECs had failed, and failed repeatedly, to meet their burden of proof under Section 204(a) of the Communications Act of demonstrating that the overhead loading amounts set forth in their tariffs were just and reasonable.[4/] The Commission made the interim prescription "subject to a two-way adjustment mechanism that will protect both the customers and the LECs in the event refunds or supplemental payments are warranted at the conclusion of our further investigation."[5/]

BellSouth's Petition challenges the lawfulness of the Commission's interim prescription of a maximum permissible overhead loading factor, arguing that such an interim prescription procedure is beyond the Commission's authority under Section 204(a) of the Communications Act and contrary to the scheme of "carrier-initiated" tariff filings embodied in Sections 201-205 of the Act. The Petition does not address the merits of the maximum permissible overhead loading factor prescribed under the First Report and Order, or make any effort to justify the overhead loading factor used in BellSouth's tariff which would supplant the prescribed factor if the Petition were granted. In effect, BellSouth argues that the overhead loading factors contained in the filed tariffs must be allowed to take effect irrespective of whether they are lawful.

Although the First Report and Order represents only the most recent step in a long-standing effort by the Commission to

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4/ Id.

5/ Id.

promote interstate access competition through the provision of expanded interconnection opportunities,[6/] it is a most important step. First, following years of effort and based upon an extensive record compiled in the Commission's Expanded Interconnection Proceeding (CC Docket No. 91-141) and Transport Rate Structure Proceeding (CC Docket No. 91-213), implementation of the LECs' tariffs for expanded interconnection for special access, as provided for in the First Report and Order, finally makes effective the rates, terms and conditions governing collocation of CAPs and other competitors in LEC central offices, enabling them to compete more effectively with LECs in the provision of special access. In addition, the rates, terms and conditions provided for under the expanded interconnection tariffs represent a critical juncture in the process of achieving an environment in which exchange access competition may flourish. It is not an overstatement to say that the success of expanded interconnection is substantially dependent upon implementation of just and reasonable interconnection tariffs and, therefore, upon the Commission's ability to prevent LECs from effecting unjust, unlawful or anticompetitive tariff provisions; e.g., employing

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6/ See, Expanded Interconnection with Local Telephone Company Facilities, 7 FCC Rcd 7369 (1992), recon., 8 FCC Rcd 127 (1992); pets. for recon. pending, appeal pending sub nom. Bell Atlantic Corp. v. FCC, No. 92-1619 (D.C. Cir., filed Nov. 25, 1992).

inflated overhead loading factors which result in excessive and therefore anticompetitive interconnection rates.[7/]

The Ad Hoc Committee has consistently supported the Commission's efforts to provide for expanded interconnection and has applauded the Commission's determination to achieve this goal in an expeditious manner. It is from this perspective that the Committee urges the Commission not to reconsider the First Report and Order as requested by BellSouth, thereby allowing unlawful interconnection rates to become effective. Further, as will be shown herein, the First Report and Order's interim prescription is fully consistent with the Commission's authority under the Act and, therefore, should be affirmed.

II. ARGUMENT

A. Neither The Provisions Of Section 204(a) Nor Relevant Precedent Interpreting The Commission's Authority Under Section 204(a) Require That The Commission Allow Filed Rates To Take Effect At The End Of The Five-Month Suspension Period Where The Commission Has Entered An Interim Prescription Order Finding Such Filed Rates To Be Unlawful, Notwithstanding That The Commission Has Not Completed Its Investigation

1. Interim Prescription Of Rates Is Not Proscribed By The Language Of Section 204(a)

The relevant provisions of Section 204(a) pursuant to which the Commission's interim prescription was made, and upon

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7/ Overhead loading factors are a crucial determinant in overall interconnection rate levels. Thus, in its order suspending the expanded interconnection tariff filings, the Common Carrier Bureau found that rate levels were influenced significantly by the LECs' choice of overhead factors, a determination affirmed by the Commission's finding that "the level of expanded interconnection rates is influenced significantly by overhead loadings." First Report and Order, ¶¶ 4, 38.

which BellSouth's principal argument turns, state that the Commission may:

> suspend the operation of such charge, classification, regulation, or practice, in whole or in part but not for a longer period than five months beyond the period when it would otherwise go into effect; and after full hearing the Commission may make such order with reference thereto as would be proper in a proceeding initiated after such charge, classification, regulation, or practice had become effective. If the proceeding has not been concluded and an order made within the period of the suspension, the proposed new rate or revised charge, classification, regulation, or practice shall go into effect at the end of such period;

The authority conferred under Section 204(a) allowing the Commission to "make such order. . . as would be proper in a proceeding initiated after such charge . . . had become effective" (emphasis added) refers to the prescription powers provided the Commission under Section 205 of the Act; specifically, those provisions of Section 205 which give the Commission the authority to "determine and prescribe what will be the just and reasonable charge or the maximum or minimum, or maximum and minimum, charge or charges to be thereafter observed, . . ." Thus, the Commission has the authority to prescribe rates in the course of a Section 204(a) investigation of newly filed rates, just as it can prescribe rates pursuant to a Section 205 investigation of existing rates.

BellSouth does not dispute that the Commission has the power to prescribe rates in this investigation pursuant to the authority granted under Section 204(a). Rather, the principal thrust of the Petition is that Section 204(a) does not allow for an interim rate prescription (i.e., a prescription issued prior

to completion of the investigation), but rather requires automatic implementation of filed rates following expiration of the five-month maximum suspension period unless, within that period, the Commission concludes its investigation.

BellSouth's analysis is flawed. Neither Section 204 or 205 of the Act makes mention of "interim" prescription of rates. A logical analysis should therefore begin with the conclusion that, contrary to the central premise of BellSouth's Petition, interim prescription is not expressly precluded by the statute. More directly relevant, and indeed dispositive of the issue, is that the language of Section 204(a) is sufficiently commodious to accommodate the interim prescription procedure adopted by the Commission in the First Report and Order.

The language of Section 204(a) providing that filed rates must go into effect after the suspension period "[i]f the proceeding has not been concluded and an order [has not been] made within the period of the suspension" is generally examined in the context of the typical Section 204(a) proceeding which is "concluded" and in which the "order [is] made" simultaneously. However, Section 204(a) does not require that these events necessarily coincide. Here, the Commission has chosen an interim prescription procedure whereby an "order [has been] made", but the proceeding not yet concluded, an approach that, contrary to BellSouth's remonstrations, is not precluded by the conditional requirement under Section 204(a) for automatic implementation of filed rates following the suspension period. Rather, by its own

terms, Section 204(a) requires filed rates to go into effect after the suspension period only if "the proceeding has not been concluded and an order [has not been] made". (Emphasis added). Thus the Commission, having "made" a valid prescription order within the suspension period, is not required by the provisions of Section 204(a) to allow the filed expanded interconnection rates to take effect.

Section 204(a) provides that the Commission may not suspend a tariff for longer than five months. The actions taken by the Commission in the First Report and Order are consistent with this limitation, providing for the effectiveness of the special access expanded interconnection tariffs at the end of the statutory five-month period as required. Although the Commission may suspend rates only for a maximum of five months under Section 204(a), this provision also gives the Commission the power to prescribe rates during the course of its investigation -- either before or after the suspension period expires -- if the Commission finds that the filed rates are unjust and unreasonable. This is all that the Commission did in prescribing maximum permissible overhead factors in its First Report and Order.

2. The First Report and Order Does Not Conflict With Precedent Defining Limitations On The Commission's Powers To Act Upon Carrier-Initiated Tariff Filings, And Is Consistent With The "Careful Balancing Of Interests" Required By Such Precedent

BellSouth also argues that the Commission's interim prescription of rates is inconsistent with judicial decisions

which have interpreted the "balance of interests" Congress sought to achieve in Sections 201-205 of the Act generally, and the specific limitations on the Commission's authority under Section 204(a) to act on carrier-initiated tariff filings.[8/] The Ad Hoc Committee agrees with BellSouth that the Commission's powers in dealing with tariff filings is limited under the Communications Act, and that the courts have made clear that in adopting Sections 201-205 Congress enacted a scheme of carrier-initiated tariff filings intended to achieve a careful balancing of interests between carriers and their customers. However, such a balancing of interests implies, and indeed the courts have held that, not only are the Commission's rights limited, but the rights of carriers to file tariffs are limited as well.[9/] Contrary to BellSouth's arguments, the Commission's First Report and Order is consistent both with the specific provisions of Section 204(a) limiting the Commission's power to suspend tariff filings, and with the balancing of interests mandated under the Act.

8/ Petition, pp. 4-8. BellSouth relies principally upon AT&T v. FCC, 487 F.2d 865 (2nd Cir. 1973) ("AT&T v. FCC"), and MCI v. FCC, 627 F.2d 322 (D.C. Cir. 1980) ("MCI v. FCC") (which discuss the carrier-initiated tariff filing, suspension and investigation, and rate prescription procedures provided for under Sections 201-205 of the Act), and United States v. Students Challenging Regulatory Agency Procedures, 412 U.S. 669 (1973) ("SCRAP") wherein the Supreme Court interpreted provisions of the Interstate Commerce Act similar to Section 204(a) of the Communications Act, amplifying on its earlier opinion in Arrow Transportation Co. v. Southern R. Co., 372 U.S. 658 (1963).

9/ Carriers do not have an "unrestricted right to file rate changes." 487 F.2d at 880.

In describing the balancing of interest factors that are relevant from the carriers' perspective as defined by the Supreme Court in SCRAP, the AT&T v. FCC Court stated:

> In light of the Supreme Court's interpretation of analogous provisions of the Interstate Commerce Act, it is abundantly clear to us that the statutory scheme of the Communications Act reflects the realization of Congress that when a carrier is prevented from placing in effect new rate increases it may suffer irreparable loss which in turn may impede the provision of adequate service during a period of rising costs. (Footnotes omitted). (Emphasis added).[10/]

Given the First Report and Order's two-way adjustment mechanism, which will allow rates to be adjusted in either the carriers' or the customers' favor at the conclusion of the Commission's investigation, it is apparent that the First Report and Order's interim prescription will occasion no carrier to suffer "irreparable loss." There is also no basis for concern that, even were such loss to be shown, the interim prescription of overhead loading factors would "impede provision of adequate service." To the contrary, the very purpose of the interim prescription is to ensure timely implementation of expanded interconnection service.

Perhaps the best evidence that the First Report and Order is consistent with the balancing of interests sought to be achieved under the Act is that, despite its high-minded arguments in defense of the Act's regime of carrier initiated tariffs, BellSouth nowhere argues that the interim prescription might harm it or other affected carriers. In contrast, should the

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10/ AT&T v. FCC, 487 F.2d at 873-874.

Commission reconsider its First Report and Order as requested by BellSouth, allowing expanded interconnection rates that the Commission has determined are unlawful to take effect, the careful balancing of interests intended under Sections 201 through 205 will not have been achieved. Rather, BellSouth and other LECs will have been permitted to impose unlawful interconnection rates, tilting the intended balance unfairly on the side of the carriers and against the interests of customers. Moreover, in the particular circumstances presented here, the balance of interest analysis weighs more heavily against the carriers because the injury to customers (i.e., the LECs' interstate access competitors taking service under the interconnection tariffs) from reconsideration of the First Report and Order would be more than just paying excessive rates, the usual measure of customer injury. Here, the future of competitive access providers and of competition in the provision of interstate access services, as well as the resultant benefits of such competition to the general public, all are dependant upon the LECs' interconnection tariffs being just and reasonable.

The precedent relied upon by BellSouth fails to support its position on the balancing of interests issue. While AT&T v. FCC provides a good discussion of the tariff filing and regulatory review scheme embodied in the Act, it addresses an entirely different kind of FCC action than the one at issue here. In AT&T v. FCC, the Court struck down a requirement that AT&T obtain "special permission" from the Commission before filing any

revisions to tariffs governing provision of certain private line services. The Court found that such a prior approval requirement for the filing of tariff revisions was inconsistent with the carrier-initiated tariff filing scheme and balancing of interests intended by Congress in enacting Sections 201-205 of the Communications Act. While the Court's opinion is instructive, it does not support BellSouth's reconsideration request because the action taken by the Commission here -- an interim prescription of a maximum overhead loading factor -- is not the equivalent of a requirement for prior Commission consent to the filing of a tariff. Indeed, the discussion in AT&T v. FCC of the Supreme Court's decision in Permian Basin Area Rate Cases, 390 U.S. 747 (1968) ("Permian") turns upon this very distinction and serves to support the validity of the Commission's prescription of a maximum permissible overhead loading factor in the Report and Order. Thus, in AT&T v. FCC the Court found that the Supreme Court's approval of a rate change moratorium imposed by the Federal Power Commission in Permian did not support the special permission requirement because it "involved an issue entirely different from that in the instant case" i.e., rate prescription. The Court stated:

> [In Permian] the moratorium on rate changes by gas companies was imposed after the FPC had prescribed agency made rates pursuant to its prescription power, i.e., after a full hearing and a determination that the prescribed rate was just and reasonable. 390 U.S. at 777-79."[11/]

11/ 487 F.2d at 877. The Court also noted that Permian rejected the argument that carriers have an "unrestricted right to file rate changes." 487 F.2d at 880.

Unlike the circumstances presented in AT&T v. FCC, the Commission here has not sought to unlawfully delay either the filing or the effectiveness of the interconnection tariffs. Indeed, the First Report and Order was adopted, and the interim prescription imposed, for the express purpose of implementing expanded interconnection on a timely basis. Further, the First Report and Order effected a lawful prescription as in Permian.

Stretching for additional precedent to support its position, BellSouth also argues that "the current situation is not unlike one addressed by the Court of Appeals in MCI v. FCC."[12/] The fact is that, like AT&T v FCC, this case too addressed substantially different circumstances from those presented here. In MCI v. FCC, rather than acting promptly to prescribe interim rates as did the Commission in its First Report and Order, the Commission declared "unlawful" but allowed AT&T WATS rates to remain in effect over a period of several years repeatedly failing to reach a determination of whether they were or were not "just and reasonable." The Court found that a tariff "not found by the FCC to be either just and reasonable or unjust and unreasonable on the basis of the carrier's supporting evidence at the point of filing can avoid the stigma of unlawfulness, at least for a reasonable period of time."[13/] By contrast, in the First Report and Order, the Commission declined to allow the interconnection rates to go into effect as filed,

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12/ Petition, p. 7.

13/ 627 F.2d at 338.

and clearly determined "that the rates for expanded interconnection service filed on February 16, 1993 by the local exchange carriers subject to this order are unjust and unreasonable, and therefore unlawful."[14/]

Although not supportive of BellSouth's Petition because it is distinguishable on its facts, the Court's opinion in MCI v. FCC is instructive for two reasons. First, the Court made clear that had the Commission found the rates to be unjust and unreasonable (as the Commission has here in the First Report and Order), "the prohibition of unjust and unreasonable tariffs in § 201(b) of the statute would prevent the FCC from continuing these revisions in effect."[15/] Thus, MCI v. FCC supports the First Report and Order's interim prescription as necessary to meet the requirements of Section 201(a). Second, the Court recognized the need for affording the Commission some flexibility in remedying unlawful tariffs, indicating that the Commission might perhaps continue unlawful tariffs in effect for a short period to allow the carrier to quickly develop an interim alternative so as to prevent cessation of vital communications service, and noting that "there must be enough movement in the statutory joints to allow for such an exigency, . . ."[16/] The Commission's interim prescription of a maximum permissible overhead loading factor

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14/ First Report and Order at ¶ 45. (Emphasis added).

15/ 627 F.2d at 338.

16/ Id.

here fits within the flexibility afforded by the Act to remedy unlawful tariffs.

BellSouth's Petition attempts to make out a violation of Section 204(a) based upon the fact that, in the First Report and Order, the Commission prescribed a maximum permissible overhead loading factor during the suspension phase of the investigation, while continuing its investigation of overhead loading factors and other issues related to the lawfulness of the interconnection tariffs for final resolution in the post-suspension phase of the investigation. However, while BellSouth may not agree with the Commission's procedure, nothing in Section 204(a) precludes, and none of the precedent discussed in the Petition proscribes, such a procedure. Therefore, and because the procedure is indisputably consistent with the overall balancing of interests Congress intended, BellSouth's arguments that the First Report and Order is contrary to judicial interpretations of the Commission's tariff suspension and rate prescription powers should be rejected.

B. The First Report And Order Established A Lawful Rate Prescription Because The Commission Provided An "Opportunity For Hearing" And Reached Findings Of "Justness And Reasonableness" As Required Under Section 205 To Prescribe Rates

A rate prescription is deemed valid under Section 205 of the Act where, having afforded parties a "full opportunity for hearing", the Commission finds that its action is "just and reasonable."[17/] These requirements were complied with in the

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17/ Nader v. FCC, 520 F.2d 182, 204 (D.C. Cir. 1975).

First Report and Order's interim prescription of a maximum permissible overhead loading factor.

BellSouth contends that because the investigation of the carriers' expanded interconnection tariffs continues in this proceeding, there has not yet been the requisite "full opportunity for hearing."[18/] This argument should be rejected. The fact that the Commission's investigation into all aspects of the carriers' tariffs continues does not mean that the opportunity for hearing required to prescribe an interim maximum permissible overhead loading factor has not been afforded and, indeed, there can be no question but that the LECs have been given ample opportunity to address this issue and to remedy the concerns the Commission and other interested parties have addressed. Thus, despite repeated requests from the Commission, the LECs time and again failed to justify their overhead loading factors, essentially ignoring every opportunity to do so afforded them by the Commission.[19/]

18/ Petition, p. 9.

19/ As well catalogued by the Commission in the First Report and Order (see, ¶¶ 4, 7, 9, 13, 28), the vetting of the overhead loading issue provided by the Commission's orders and the exchanges of data and arguments relative thereto in the parties' filings first in the Expanded Interconnection Proceeding (CC Dkt. No. 91-141), next in petitions to reject and suspend the special access expanded interconnection tariffs and the carriers' responsive filings and, finally, in this proceeding in the carriers' Direct Cases, parties' comments on the Direct Cases and the carriers' replies, has been extensive and clearly meets the "full hearing" requirement of Section 205 for prescription of rates. Access Tariffs (Alternative Access Technologies), 69 RR2d 448, 459 (1991) (notice and comment procedures satisfy

(continued...)

Similarly, the First Report and Order reached fully detailed conclusions sufficient to demonstrate that the prescribed interim maximum overhead loading factor was a just and reasonable action by the Commission.[20] Comparing the paucity of information provided by the LECs on the one hand, with the Common Carrier Bureau's carefully derived ARMIS-based overhead factors, and considering the LECs' refusal to comply with the Commission's request that they justify any differences between their special access expanded interconnection rate overhead loadings and the overhead loadings used for other services, the Commission's decision to use the Bureau's ARMIS-based FDC overhead levels "to ensure that rate levels based on verifiable and reasonable overhead loading factors are in place pending further investigation of the LECs' special access expanded interconnection tariffs",[21] was a demonstrably just and reasonable action.[22]

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[19] (...continued)
requirement for "full opportunity for hearing" under Section 205(b)).

[20] In contrast to the Commission's findings in the First Report and Order, in American Telephone & Telegraph Company v. FCC, 449 F.2d 439 (2nd Cir. 1971), another case relied upon by BellSouth (Petition, fn. 20), the Commission extended Telpak sharing to all users to remedy discrimination, but had refused to find the Telpak rates were just and reasonable. 449 F.2d at 451.

[21] First Report and Order, ¶ 35.

[22] It might further be noted that to the extent the record is not yet complete on this issue, it is due entirely to the fact the carriers have stonewalled the Commission's requests
(continued...)

Finally, to the extent BellSouth's argument is that the Commission failed to make an explicit finding that the prescribed rates are just and reasonable, the Court in Nader v. FCC expressly disclaimed such a requirement.[23/]

1. Contrary To BellSouth's Assertions, The Commission May Properly Reach A Determination That An Interim Prescription Is Just And Reasonable, And May Later Approve A Permanent Rate Structure As Just And Reasonable Even If Different From The Rate Structure Implemented Under The Interim Prescription

A subsidiary element of BellSouth's argument appears to be that because the expanded interconnection tariff investigation was not terminated by the First Report and Order and that the Commission, upon concluding its investigation, may issue a final prescription of just and reasonable overhead loadings which might differ from the interim prescription, both the Commission's interim and final prescriptions of overhead loadings cannot be considered just and reasonable.[24/] BellSouth's argument is without merit. The prescribed maximum overhead loading, found by the Commission to be just and reasonable based upon currently

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22/ (...continued)
that they justify the overhead loading factors contained in their tariffs. To prevent it from benefitting from its own intransigence, BellSouth should be estopped from arguing that the Commission cannot prescribe maximum permissible overhead loading factors in these circumstances.

23/ The Court found the Commission's prescription procedure acceptable even though "the Commission did not use the just and reasonable terminology." 520 F.2d at 204.

24/ Put another way, BellSouth's position is that because the Commission may ultimately reach further determinations with respect to appropriate levels of overhead loading factors during the course of the investigation, it cannot make an interim finding of justness and reasonableness.

available information, will represent a no less lawful and proper determination by the Commission in the event it ultimately prescribes different overhead loading factors based upon evidence developed during the subsequent course of its investigation. Carried to its logical conclusion, BellSouth's argument would leave the Commission powerless to proceed, either upon complaint or on its own motion, to investigate and prescribe rates under Section 205 for any service in connection with which it earlier conducted a Section 205 investigation (or, a Section 204(a) investigation of the rates when filed) because, following BellSouth's logic, rates once prescribed remain perpetually "just and reasonable." It cannot be seriously argued such was the intent of Congress in adopting these provisions.

C. The Commission Properly Relied Upon Lincoln Telephone And Section 4(i) To Support Its Interim Prescription

BellSouth argues that the First Report and Order's reliance on Lincoln Telephone and Telegraph Company v. FCC, 659 F.2d 1092 (D.C. Cir. 1981) ("Lincoln Telephone") is misplaced because the provisions of Sections 204-205 of the Act were not implicated in that case. In a similar vein, BellSouth argues that the Commission's general powers under Section 4(i) cannot be used to support the First Report and Order because its interim prescription is contrary to more directly governing provisions under Sections 204-205.[25/]

25/ Petition, pp. 10-13.

The short answer to these arguments is that, as shown above, the First Report and Order is consistent with Sections 204-205, and with the overall statutory scheme governing carrier initiated tariffs. Beyond this, however, BellSouth overlooks the fact that the Commission's expanded interconnection tariff proceeding is, like Lincoln Telephone, an interconnection case. The tariffs under investigation in this proceeding are not purely "carrier initiated" tariffs, but are tariffs the Commission has ordered all Tier 1 LECs to file to implement special access expanded interconnection as mandated by the Commission in the Expanded Interconnection Proceeding (CC Docket No. 91-141). That these tariffs are not "carrier initiated" is underscored by the LECs' continuing efforts to oppose expanded interconnection at virtually every opportunity. Because the expanded interconnection tariffs are not carrier initiated, the precedent established in Lincoln Telephone for FCC imposition of interim tariffing of FCC-mandated interconnection is, as the First Report and Order concluded, more directly applicable here than the more general body of precedent interpreting Sections 204 and 205 of the Act.

III. CONCLUSION

The interim prescription procedure adopted by the Commission in its First Report and Order is lawful, just and reasonable. The BellSouth Petition fails to demonstrate

otherwise and should be denied.

Respectfully submitted,

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February 4, 1994

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